GOVERNMENT OF INDIA
ENVIRONMENT, FORESTS AND CLIMATE CHANGE
LOK SABHA

UNSTARRED QUESTION NO:4576
ANSWERED ON:21.04.2015
VIEWS OF NGT
Hari Shri G.

Will the Minister of ENVIRONMENT, FORESTS AND CLIMATE CHANGE be pleased to state:

(a) whether the National Green Tribunal (NGT) has taken a serious view of the Government`s decision to allow developers of linear project such as roads and transmission line to fell trees in forest areas as the Government has given an in principle approval before the final forest clearance is awarded;

(b) if so, the details thereof;

(c) whether the Government has submitted its views before the National Green Tribunal in this regard; and

(d) if so, the details thereof?

Answer

MINISTER OF STATE (INDEPENDENT CHARGE) FOR ENVIRONMENT, FOREST AND CLIMATE CHANGE (SHRI PRAKASH JAVADEKAR)

(a) to (d) Milind Pariwakam & Anr. filed an Original Application before the National Green Tribunal to challenge the communications dated 8th August, 2014 and 15th January, 2015 issued by the Ministry of Environment, Forest and Climate Change to the effect that in case of projects involving linear diversion of forest land such as laying of new roads, widening of existing highways, transmission lines, water supply lines, optic fiber cabling, railway lines etc., in-principle approval under the Forest (Conservation) Act, 1980 (FC Act) issued by the Central Government may be deemed as the working permission for tree cutting and commencement of work, if the required funds for compensatory afforestation, net present value (NPV), wildlife conservation plan, plantation of dwarf species of medicinal plants, and all such other compensatory levies specified in the in-principle approval are realised from the user agency and where necessary, for compensatory afforestation, transfer and mutation of non-forest/revenue forest land in favour of State Forest Department is affected and an Order for tree cutting and commencement of work of linear project(s) in forest land by an Officer not below the rank of a Divisional Forest Officer having jurisdiction over the forest land proposed to be diverted, duly authorised by the State Government in this regard, is issued.

The Central Government submitted following views before the National Green Tribunal in the said mater:

(i) For the purpose of Section 2A of the FC Act and Section 16 (e) of the National Green Tribunal Act, 2010, an Order for tree cutting and commencement of work of linear project(s) in forest land, to be passed by the State Government or a Senior Officer not below the Rank of a Divisional Forest Officer, having jurisdiction over the forest land proposed to be diverted, duly authorized in this behalf by the State Government, as is provided in the guidelines issued vide letter No. 11-306/2014-FC dated 15th January 2015, shall be an order under Section 2 of the FC Act. Till such order is passed no felling of trees or project related activity shall be undertaken in the forest land diverted for linear projects.

(ii) An appeal as per provisions of section 2 (A) of Forest (Conservation) Act, 1980 and/or under Section 16 (e) of the National Green Tribunal Act, 2010 can be filed against any such order for tree cutting and commencement of work of linear project(s) in forest land.

(iii)In the event of filing of such appeal, it would be open for the person aggrieved, to assail the order/Clearance granted by the Central Government under Section 2 of the Forest (conservation) Act, 1980 which forms and integral and sole basis of the order passed by the State Government or a Senior Officer authorised by the State Government as aforementioned, for tree felling and commencement of linear project in forest land.

(iv) The State Government and the Project proponent shall take further action as has been stipulated by the Hon'ble National Green Tribunal in their Judgment dated 7th November 2012 in Appeal No. 7/2012 to accord publicity and to ensure availability in public domain of stage-I approval accorded by the Central Government and the order passed by the State Government or a Senior Officer authorised by the State Government as aforementioned. The State Government and the Project Proponent shall also ensure strict compliance of other direction(s) contained in the said judgment.

The National Green Tribunal disposed of the said Application by their following Order dated 13th March 2015:

"This Original Application No. 55 of 2015 has been filed by the Applicant who claims to be a Wildlife Biologist interested in the Environmental and Wildlife issues. According to him, he has been pursuing these remedies now for a considerable time.

By means of this Application, the challenge has been raised to the communications dated 8th August, 2014 and 15th January, 2015 issued by MoEF, Respondent No. 1 in this Application.

The prime challenge to these communications is inter alia but primarily on the following grounds:

These communications are in violation of the scheme and particularly Section 2 of the Forest Conservation Act, 1980.

1. The communications are bound to adversely affect the right of appeal as contemplated to an aggrieved person in terms of Section 16 of the National Green Tribunal Act, 2010.

The Learned Counsel appearing for the Union of India fairly stated that there is legal lacuna in the communications issued by the Ministry but in view of the Affidavit that has been filed before the Tribunal today, the said lacuna and the gaps stand fully satisfied. Thus there is hardly any occasion for the Tribunal to quash these communications.

The legal position undisputed before us is that permitting user of the Forest area for non-forest activity can only be permitted under Section 2 of the Forest Conservation Act, 1980 by the State Government in whose jurisdiction the forest falls. It is also undisputed before us that MoEF has intended to provide guidelines for expeditious granting of consent to the linear projects which are amongst others of national importance and necessary for the development of the country

We have perused the Affidavit filed on behalf of Respondent No. 1 before us today. It is correct that this Affidavit remedies the legal error in the OM but not to the entire extent. In light of the above submissions and having heard the Learned Counsel appearing for the parties at some length, we pass the following directions:

The OM issued by MoEF will be given effect to read with the Affidavit but only and only subject to the directions contained in this Judgment.

No non-forest activity in the Forest Area that is covered under Section 2 of the Forest Conservation Act, 1980 would be permitted and carried on in any manner whatsoever unless an order has been passed by the competent authority of that State Government and put it in the public domain by putting it on its website and complying with the other requirements in accordance with law.

As the law has already been stated by the Tribunal that it is only an Order passed under Section 2 of the Forest Conservation Act, 1980 that is appealable under Section 16 of the NGT Act, we direct that Appeals would lie against such Orders to avoid difficulty to any litigant/ aggrieved person from approaching the Tribunal in accordance with law.

The communications dated 8th August, 2014 and 15th January, 2015 will be read and construed in terms of this Judgment alone.

We make it clear that if any condition has been put up by the MoEF in its approval required by the State Government only those conditions can be complied with which are administrative in nature and do not in any way include or even permit carrying on of any activity in the forest area.

In addition to the above, we expect MoEF to put its approval required under Section 2 Forest Conservation Act, 1980 to put on the website.

Accordingly, Original Application No. 52 of 2015 stands disposed of while leaving the parties to bear their own costs."